IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.246 OF 1987

Shivaji Waman Godase ...Appellant
Vs.
Chandrapati Ishwarsingh Dahiya & Ors. ...Respondents

WITH
FIRST APPEAL NO.511 OF 1987

The Oriental Insurance Co. Ltd. ...Appellant
Vs.
Chandrapati Ishwarsingh Dahiya & Ors. ...Respondents

WITH
FIRST APPEAL NO.247 OF 1987
AND
CROSS-OBJECTION (ST) NO.14198 OF 1987

Shivaji Waman Godase ...Appellant
Vs.
Uma Shankar Patil & Ors. ...Respondents

WITH
FIRST APPEAL NO.248 OF 1987
WITH
CROSS-OBJECTION

Shivaji Waman Godase ...Appellant
Vs.
Vimladevi Wazirsingh Joon & Ors. ...Respondents

WITH
FIRST APPEAL NO.249 OF 1987

Shivaji Waman Godase ...Appellant
Vs.
Kashibai Rajabhau Raut & Ors. ...Respondents

WITH
FRIST APPEAL NO.250 OF 1987

Shivaji Waman Godase ...Appellant
Vs.
Santosh Ramchandra Dahiya & Ors. ...Respondents

WITH
FIRST APPEAL NO.251 OF 1987

Shivaji Waman Godase ...Appellant
Vs.
Maharashtra State Road Transport
Corporation & Ors. ...Respondents

WITH
FIRST APPEAL NO.432 OF 1997

Shalubai Rajaram Margale (since deceased)
through legal representatives ...Appellants
Vs.
Shivaji Waman Godase & Ors. ...Respondents

WITH
FIRST APPEAL NO.510 OF 1987

The Oriental Insurance Co. Ltd. ...Appellant
Vs.
Santosh Ramchandra Dahiya & Ors. ...Respondents

WITH
FIRST APPEAL NO.512 OF 1987

The Oriental Insurance Co. Ltd. ...Appellant
Vs.
Vimaladevi Wazirsingh Joon(Choudhari)
& Ors. ...Respondents

WITH
FIRST APPEAL NO.513 OF 1987

The Oriental Insurance Co. Ltd. ...Appellant
Vs.
Maharashtra State Road Transport
Corporation & Ors. ...Respondents

WITH
FIRST APPEAL NO.514 OF 1987

The Oriental Insurance Co. Ltd. ...Appellant
Vs.
Kashibai Rajabhau Raut & Ors. ...Respondents

AND
FIRST APPEAL NO.515 OF 1987

The Oriental Insurance Co. Ltd. ...Appellant
Vs.
Uma Shankar Patil & Ors. ...Respondents

Shri M.B. Kotak and Mrs Sangeeta Shinde for the Appellants in First Appeal Nos.246 to 251 of 1987.

Shri D.S. Sawant for the Appellant in First Appeal No.432 of 1997.

Mrs A.A. Agarwal for the Appellant in First Appeal No.510 to 515 of 1987.

Shri G.S. Hegde for the Respondent-Maharashtra State Road Transport Corporation.

Shri M.B. Kotak with Mrs Sangeeta Shinde for the Respondent-owner of the Dumper in First Appeal No.432 of 1997 and First Appeal Nos.510 to 515 of 1987.

Mrs A.A. Agarwal for the Insurer of the Dumper in First Appeal No.246 to 251 of 1987 and First Appeal No.432 of 1997.

Shri R.L. Patil and Shri Sachin Punde for the Respondent Nos.1 to 6 in First Appeal No.247 of 1987.

Ms Subhangi Deshmukh for the Respondent Nos.1 to 6 in First Appeal No.249 of 1987.

CORAM : ABHAY S. OKA, J.

DATE : APRIL 20, 2006.

JUDGMENT:

1. The submissions of the learned Counsel appearing for the parties were heard yesterday. All the First Appeals in this group arise out of the same accident. The impugned judgment in all these Appeals except in First Appeal No.432 of 1997 is a common judgment delivered in separate Claim Petitions. Therefore, the Appeals can be conveniently disposed of by a common judgment.

2. All the Appeals except one arise out of Claim Petitions filed under section 110-A of the Motor Vehicles Act, 1939 (hereinafter referred to as the said Act of 1939). One Appeal arises out of a Claim Petition under section 166 of the Motor Vehicles Act, 1988. All the Claim Petitions arise out of an unfortunate accident which took place on 20th July, 1984. The accident took place at Kesurdi Phata, Pargaon, Taluka Khandala, District Satara. A bus owned by the Maharashtra State Road Transport Corporation was proceeding from Panaji to Pune. The other vehicle involved in the accident was a dumper-truck (hereinafter referred to as "the dumper") owned by the Appellant in First Appeal Nos.246 to 251 of 1987. The dumper was coming from the opposite side. There was a collision between two vehicles. The impact of the accident was so devastating that the entire right side of the bus from the driver’s cabin till the end was completely torn exposing the seats on the right hand side. There were 35 passengers in the ill-fated bus. 8 passengers died on the spot and one passenger succumbed to injuries later on. 11 passengers suffered injuries. The driver of the State Transport bus also suffered injuries.

3. Number of Claim Petitions were filed before

the Tribunal. One of the Claim Petitions was dismissed in so far as some of the claimants were concerned on the ground of bar of limitation. The issue before the Tribunal was whether the accident occurred due to composite negligence on the part of both the drivers. The Tribunal recorded a finding that the accident occurred due to rash and negligent driving on the part of the driver of the dumper. The Tribunal also accepted the defence of the insurer (i.e. the Oriental Fire and General Insurance Co. Ltd.) of the dumper that its liability to third party risk was limited. The Tribunal however did not accept the contention of the insurer that the liability was limited to Rs.50,000/- and the Tribunal came to the conclusion that the liability was restricted to Rs.01,50,000/- in each case.

4. First Appeal No.246 of 1987 has been preferred by the owner of the dumper for challenging the award made in M.A.C. Application No.190 of 1984. By the said award the driver, the owner and the insurer of the dumper were held liable to pay compensation of Rs.3,26,200/- to the original claimants with future interest at the rate of 12% per annum from the date of Application till the recovery of the amount together with proportionate costs. The liability of the

insurance company was held to be restricted to Rs.1,50,000/- with interest thereon and proportionate costs. First Appeal Nos.247 of 1987, 248 of 1987, 249 of 1987, 250 of 1987 and 251 of 1987 have been preferred by the owner of the dumper for challenging the judgments and awards made in M.A.C. Application No.10 of 1986, 191 of 1984, 189 of 1985, 189 of 1984 and 10 of 1985. In First Appeal Nos.247 of 1987 and 248 of 1987 cross-objections have been filed by the original claimants. First Appeal No.432 of 1997 filed by the original Claimants takes exception to the judgment and award made by the Tribunal in M.A.C. Application No.408 of 1990. First Appeal No.510 of 1987, 511 of 1987, 512 of 1987, 513 of 1987, 514 of 1987 and 515 of 1987 are preferred by the insurer of the dumper for challenging the same awards against which the owner of the Dumper has preferred aforesaid Appeals. The Appeals preferred by the owner of the Dumper are for challenging the finding of negligence recorded against the driver of the Dumper. The contention raised in the Appeal is that the accident occurred due to the negligence on the part of the driver of the bus of the State Transport Corporation. Only in First Appeal No.246 of 1987 (arising out of Claim Application No.190 of 1984) the challenge is also to the quantum of compensation. The challenge in

the Appeal preferred by the insurer of the Dumper is on the issues of negligence. The challenge in the First Appeal No.432 of 1997 is to the rejection of the claim of the Claimant Nos.1 to 5 on the ground of bar of limitation.

5. The submission of Shri Kotak appearing for the owner of the dumper is that the accident occurred due to the negligence on the part of the driver of the State Transport Corporation Bus. His other two submissions which are made without prejudice to the first submission are that in any event, there was a composite negligence on the part of both the drivers and that there is no evidence led by the insurance company to prove that its liability was restricted to Rs.1,50,000/-. He has taken me through the pleadings and notes of evidence. He has invited my attention to various decisions of this Court, other High Courts and Apex Court which are dealt with in the later part of this judgment. The submission of Mrs Agarwal in support of the Appeals preferred by the insurer of the dumper is that the accident occurred due to negligence on the part of the driver of the State Transport bus. Her submission is that the limit of liability of the insurance company was Rs.1,50,000/-. Shri Hegde

appearing for the State Transport Corporation in all the Appeals has supported the impugned judgments and awards and especially the finding recorded as regard negligence. He has also taken me through the relevant part of the evidence. I have also heard Shri Punde and Ms Deshmukh for the original claimants in some of the Appeals.

6. Broadly, following points arise for my consideration:

(i) Whether the accident occurred due to negligence on the part of the driver of the S.T.Bus or the driver of the dumper or whether there is was a composite negligence?

(ii) Whether the liability of the Insurer of the dumper was limited to Rs.1,50,000?

(iii) Whether the impugned awards are legal?

So far as Appeal No.432 of 1977 is concerned, the aforesaid issues arise alongwith the issue of limitation which is dealt with separately.

7. In so far as involvement of both vehicles in the accident is concerned, there is hardly any dispute. The owners and drivers of both the vehicles have tried to shift blame on each other for negligence. It will be necessary to refer to the relevant evidence on record for deciding the issue of negligence. At this stage, it may not be necessary to refer to the evidence of most of the claimants as none of them are eye-witnesses. Therefore, I am considering only the evidence of the relevant witnesses. Witness No.5 examined by the Applicant is one Shri Sahebrao Rau Landage who is a panch witness to the panchnama of the spot of accident. Witness No.6 Shri Ramchandra Abaji Gadhave is a panch witness to the panchnama of the dumper. Witness No.7 Shri Sureshbabu Dhullappa Talbhandare is a P.S.I. attached to Khandala Police Station at the relevant time. He prepared panchnama of the spot of the accident and he recorded the inquest panchnama. Witness No.8 Shri Barma Rama Dhende is an Officer authorised by the Maharashtra State Road Transport Corporation to depose in the claim made by the said Corporation. He has deposed about the claim of the Maharashtra State Road Transport Corporation. Witness No.9 is one Shri Vilas Laxman Bandal who was working as a senior foreman at S.T. Workshop, Pune. Witness No.10 Mahadeo Ganpat

Pawar is the driver of the said State Road Transport Corporation Bus involved in the accident. The Witness No.1 for the Opponent Shri Hanumant Namdeo Bhokare was a passenger travelling in the ill-fated S.T.Bus. Another witness examined by the original Opponents is Shri Uttam Abaji Pisal who was the driver of the dumper at the relevant time. One Shri Shivaji Ganpatrao Deokar is a passenger travelling in the S.T. Bus at the time of the accident.

8. Firstly, it will be necessary to refer to evidence of the driver of the dumper. The driver of the dumper Uttam has deposed that at about 7.30 p.m. on the day of the accident after completing work he was returning with the dumper. By taking a katcha road he joined the highway and started proceeding towards Satara. According to him the Dumper was proceeding along the left side of the road with the speed of about 20 kilometre per hour. He stated that at the relevant time dumper was empty. He stated in examination-in-chief that if the empty dumper is driven in fast speed, it vibrates and it cannot be controlled. According to him up to speed of 40 to 45 Km. per hour dumper can be driven normally without any vibration. The capacity of the dumper according to him was seven and half tons. He stated that when

he travelled distance of about 4 kilometer towards Satara, one vehicle came from opposite side in fast speed and it came on the side of the dumper and gave a dash. He stated that as he was driving the vehicle in a slow speed there was no question of application of brakes. According to him there was sufficient place towards the western portion of the road for the other vehicle to pass. He stated that the bus brushed against mudguard on the right side of the Dumper and the 'houda' (open bed of the dumper truck which tilts up to unload) portion of the dumper. He stated that he stopped the dumper at a distance of about 10 to 14 ft. after the brushing. According to him the bus stopped at a distance of 600 ft. As he apprehended that the members of the public gathered there would assault him, he left with the dumper and he went to Phaltan to report about the accident to the owner of the dumper. On the next day morning he appeared before the Phaltan Police Station with the dumper and gave information to the Police.

9. In the cross-examination he has stated that at the place of accident on both the sides the road was plane and straight and he could see vehicles coming from front side when it was at distance of about 200 to 300 ft. He stated that body of the dumper is about

three inches wider its driver's cabin. He stated that the corners of the side of the 'houda' of the dumper are sharp and there are some hooks on the outer side, both on the left and right. He denied the correctness of the suggestion that the dumper had gone three to four feet on the western part of the road and it was the dumper which gave dash to the bus. In the cross-examination, he admitted that after he left the place of accident, one ambassador car with red light waived signal to him to stop but he did not stop. He was confronted with his statement recorded by the police and especially the portions marked 'A' and 'B' of the said statement. When he was confronted with the portions of the statement marked 'A' and 'B', he denied that he told the police that he was going with the speed of 70 to 80 kilometers per hour and that he told the police that he dashed against the driver side of the S.T. bus and he did not apply any brakes. He denied to have told the police that due to dazzling lights of the bus, he lost control over the dumper. He admitted that due to dash given by the bus, the dumper was pushed towards left side to some extent.

10. Before going to the evidence of the driver of the bus, it will be necessary to refer to evidence of witness No.1 Shri Hanumant Bhokare examined by the

Opponent. He was a passenger travelling in the ill-fated bus. He stated that the bus left Satara at 6.45 p.m. and reached Khandala at 8.20 p.m. According to him, the bus was going along left side of the road after Khandala. He stated that he was not aware about the speed of the bus but, the bus appeared to be travelling in normal speed. He was sitting on the seat No.2 on the left side. He stated that the dumper gave a dash to the bus on its right side. In the cross-examination he stated that he was unable to tell whether speed of the bus was 80 kilometers per hour. A suggestion was given to him in cross-examination that he was sleeping in the bus and he got up only after the bus received the dash. However, in reply to the said suggestion, he stated that he was not able to say whether he got up only after the bus received a dash. According to him from Satara the bus reached the place of accident within one hour and ten minutes.

11. Another witness Shri Shivaji Deokar examined by the Opponents stated that he was travelling on the fateful day in the said bus from Satara to Pune. According to him the bus left Satara at 7.15 p.m. He stated that it was a super-fast bus and therefore, it was going in a fast speed. What is important is that

he stated before the Tribunal that the bus was going along the middle dividing line of the road on its own side. According to him he was sitting in the middle of the bench behind the driver facing the driver side. He stated that he could see light of the vehicle coming from opposite side. He stated that both the vehicles brushed each other. According to him, bus went up to a distance of 100 to 150 feet from the place of the accident and thereafter it stopped. He stated that he did not think that brakes were applied by the bus driver before the vehicles brushed. In the cross-examination the witness admitted that right from the driver's cabin up to the end, the tin had been completely torn. In the cross-examination no specific suggestion is given to him that his statement in the examination-in-chief to the effect that the bus was going along the middle dividing line was wrong or incorrect.

12. In the light of this evidence on record, it will be necessary to refer to the evidence of Mahadeo Pawar who was the driver of the bus of the State Transport Corporation. According to him, his duty started at Kolhapur at 04.00 p.m. He left Satara at about 07.00 p.m. He stated that after he crossed Khandala, a yellow coloured vehicle which he presumed

to be a truck came from the opposite direction with full head-lights on. According to him he was going by the left side of the road and driver of the other vehicle crossed the middle dividing line and came at the distance of three feet on its wrong side. He stated that as the vehicle came on the wrong side, he applied brakes. In the cross-examination, he denied the suggestion that he was driving the bus in the middle of the road. He stated that he could see the vehicle coming from the opposite direction when it was at the distance of about 100 feet from the bus. He stated that from the shape of the vehicle he could make out that the vehicle was a dumper. He stated that vehicle was coming in a fast speed. Importantly, he stated that he had put his foot on the brake but did not apply the brake. He stated that before he could think of applying the brake, there was a dash. He denied the suggestion that it was his bus which gave dash to the dumper. In further cross-examination, he stated that road is quite straight and the width of the tar road is 23 feet. He denied the suggestion that the speed of the bus was about 80 kilometers per hour.

13. It will be necessary at this stage to refer to the finding recorded by the Tribunal on this aspect.

The Tribunal observed in paragraph No.31 of the judgment that non-application of brakes cannot be an indication of rashness or negligence. The Tribunal observed that the driver of the bus could not have expected that the driver of the dumper will cross middle dividing line. After noting that there was some discrepancy as to whether the brakes of the bus were applied by the driver of the bus or not, the learned Member of the Tribunal came to the conclusion that merely on the basis of failure to apply brakes negligence cannot be inferred. The learned Member of the tribunal referred to the panchnama which is at Exhibit 31 which shows that the width of the highway at the spot is 33 feet with cushion of katcha road on both the sides. The panchnama discloses that a neem tree is at the distance of 14 feet to the West of the dividing line of the road. The panchnama also describes the scene of the accident. The Tribunal has observed that at the time of hearing, the insurance company and driver of the dumper were interested in pointing out that the accident was due to composite negligence on the part of both the drivers. He noted that in the applications for compensation, allegation was that it was only the driver of the dumper who was responsible for the accident. In my view, the learned Member of the Tribunal could not have given much

importance to the averments made in the Claim Petitions. Most of the Claim Petitions were filed by the claimants who were not at all aware as to how the accident occurred as they were not eye-witnesses. However, the learned Member has noted that an allegation was made that even bus was driven at high speed. The learned Member has noted that before the police, the driver of the dumper stated that he was proceeding with speed of 40 to 45 kilometers per hour and due to the dazzling lights of the bus he lost control and brushed against the bus. The learned Member of Tribunal has noted that before the Tribunal the said stand was not taken and the marked portion ‘A’ and ‘B’ in the statement of the driver recorded by police were disputed by the driver in the cross-examination. The Tribunal has noted the statement on oath by the driver of the dumper that if the dumper is driven at the speed of 45 kilometers per hour, there are no vibrations but if the speed exceeds 45 kilometers, there are vibrations. The Tribunal has observed that it is improper to accept the statement of the driver of the dumper. The Tribunal further observed that this statement itself may indicate that he must have lost control over the vehicle. The Tribunal also considered the fact that glass pieces from the S.T. bus had fallen on both sides of the

road and the broken glass pieces covered large area near the spot of accident. The Tribunal was impressed by the fact that a false defence was taken by the driver of the dumper in his written statement by contending that he was not involved in the accident. The Tribunal has relied upon the statement made by the driver of the dumper before the police and noted the contradictions brought on record in his cross-examination. Considering all these aspects, the Tribunal came to the conclusion that there was no negligence on the part of the driver of the bus and the accident occurred entirely due to negligence on the part of the driver of the dumper.

14. It appears that some of the important aspects of the evidence have been over-looked by the learned Member of the Tribunal. Evidence of Shivaji, the witness No.2 examined by the Opponents discloses that the bus was going along the middle dividing line of the road on its own side. He stated that he could see lights of the vehicle coming from the front side. He stated that both the vehicles brushed each other. Turning back to the evidence of the driver of the S.T. bus, he has stated that he was going by the left side of the road and dumper of crossed the middle dividing line and came up to the distance of about three feet

on its wrong side. He has also stated in the examination-in-chief that truck came from the opposite side with full head-lights. He stated that when the dumper came on the wrong side, he applied brakes. In the cross-examination, he however stated that he had put his foot on the brake but he did not apply the brakes and even before he could think of applying the brakes, there was a dash. As stated earlier, the impact of the accident was so much that the entire right side of the bus was torn and the seats were exposed. If driver stated that he had no time even to think of applying brakes, it is impossible to believe that the driver of the S.T. could have noticed that the dumper crossed the dividing line on the road to the extent of three feet. It is very difficult to understand how he could have stated with precision that the dumper came on the wrong side to the extent of only three feet. It is also pertinent to note that he has stated that he could see the vehicle coming from the opposite direction when it was at the distance of 100 feet. It cannot be ignored that witness Shivaji stated that as the bus was a superfast bus it was proceeding in a very fast speed. I find that there is no specific suggestion given in the cross-examination of the witness Shivaji about the said statement.

15. The driver of the dumper has stated that the S.T. bus came on its wrong side and gave a dash to the dumper. He stated that the bus was visible at distance of about 200 to 300 feet. At this stage, it must be noted that it is admitted position that the road at the spot of the accident is very straight. It is true that initially a stand was taken by the driver of the dumper denying his involvement in the accident. It is to be noted that on his own he reported to the police station in the morning after the accident.

16. In the accident of such devastating nature it is difficult to expect that the panchnama will precisely record the exact spot where the impact has taken place. The exact spot of the accident has to be reasonably ascertained from the evidence of the eye-witnesses. If evidence of all the witnesses is considered, there is enough material on record to show that the S.T.bus was being driven along the centre line of the road. As stated earlier, it is very difficult to accept the correctness of the version of the driver of the S.T. bus that the dumper came on its wrong side to the extent of three feet. Thus, it can be broadly said that the impact of the accident must be somewhere near the centre of the road. It is

impossible to come to any specific conclusion that one particular vehicle came on its wrong side. In this case, it is not the version of the driver of the S.T. bus that dumper came completely on its wrong side. According to him the extent of encroachment made by the dumper on the wrong side of the centre was to the extent of three feet. The driver of the S.T. bus has stated that he has seen the vehicle from the distance of 100 feet. The version of the driver of the dumper is that he could see the bus at the distance of about 200 to 300 feet.

17. At this stage, it will be necessary to refer to the decisions relied upon by Shri Kotak. The first decision is in the case of **Kumar Mohamed Rafique(since deceased) by his heirs Vs. Municipal Corporation of Greater Bombay, (1986 A.C.J. Page 55).** It is a decision of a Division Bench of this Court. In paragraph No.16, the Division Bench has held thus:

> "The owner of a travel-bus who invites passengers to travel on his vehicle for hire or reward is under an obligation to take all precautions to carry the passengers safe to their destination. **He takes the risk of accidents to the passengers resulting from**

their exposure to the hazardous situations."

"**The risk of such accidents occurring is always there and the owner of the vehicle must be fastened with the knowledge that such risk is always involved**." (Emphasis supplied)

Shri Kotak has pressed into service another decision of the Divison Bench of this Court in the case of **Shakuntala Shridhar Shetty Vs. State of Maharashtra reported in 1976 A.C.J. Page 368.** The view taken by the Division Bench is that a person in control of motor vehicle must keep good look out in all directions of the road and where he notices another user of the road it is his duty to so adjust the speed that in case of necessity, he can stop the vehicle instantaneously.

18. In the present case, the version of both the drivers is that they had seen the respective vehicles approaching from the opposite side from a reasonable distance. The driver of the dumper was under obligation to be very vigilant as according to him the width of the body of the dumper behind driver’s cabin is more than width of the driver’s cabin. It is also admitted position that dumper was empty and if speed

crosses a particular limit, there is a tendency on the part of the body of the dumper to vibrate. So far as driver of the bus is concerned, the evidence of witness Shivaji Deokar shows that bus was a superfast bus and was being driven in a high speed. The evidence on record shows that bus was being driven along the centre of the road. The driver of the bus was conscious of the fact that he was carrying 35 passengers. He himself has stated that he could see the dumper approaching from the distance of 100 feets in a very high speed. There is a serious contradiction in examination-in-chief and the cross-examination about the fact of the driver of the S.T.bus applying brakes. In the examination-in-chief, he has come out with a case that he had applied brakes. However, in the cross-examination he came out with a case that even before he could think of applying brake, there was a dash by the dumper. The driver of the bus has not stated that he made any attempt to take the bus on its left side. Thus, it is obvious that there is a failure on the part of both the drivers to comply with the obligation of taking care after noticing that the other vehicle was approaching in a fast speed from the opposite side. To repeat, the road was fairly straight at the place of the accident. It is not the case of any party that

at the relevant time there were vehicles around the bus and the dumper. Negligence does not always mean absolute carelessness. The negligence can be on account of failure to observe, for protection of interests of another person, the decree of care and vigilance which the circumstances require. The accident has taken place near the middle of the road. Considering all these facts, the only irresistible conclusion which can be drawn is that there was negligence on the part of the drivers of both the vehicles and to that extent the finding recorded by the Tribunal is erroneous. Therefore, liability will have to apportioned equally between the two vehicles.

19. Mr Kotak had made grievance regarding excessive compensation granted in M.A.C. Application No.190 of 1984. It will be therefore necessary to refer to the finding recorded by the Tribunal as regards quantum of compensation. The learned Member of the Tribunal has adverted to the evidence adduced by the claimants as regards the income. There is an evidence of Shri Daryavarsing, the employer of the deceased in the said claim. Income taken by the learned Judge for calculating the multiplicand is on the basis of the evidence of the employer. According to him the deceased Ishwarshingh was drawing monthly

salary of Rs.1400/-. He stated that the said Ishwarsingh used to get commission on sale of books. He was getting a sum of Rs.10,000/- per year on the said account. He stated that deceased used to be on tour very frequently and he was paid Rs.50/- per day while on tour. Considering all these aspects, the Tribunal has reasonably taken his monthly income as Rs.3,000/-. The age of the deceased was about 32 years at the time of accident. After deducting 1/3rd amount on account of personal expenditure and after applying multiplier of 13, the compensation amount will be Rs.3,12,000/-. Adding usual amount of Rs.15,000/-, the compensation amount will be Rs.3,27,000/-. Considering the evidence regarding income it is very difficult to file fault with the compensation of Rs.3,26,200/- awarded by the Tribunal in this case.

20. At this stage First Appeal No.432 of 1997 will have to be considered separately. The Appeal arises out of Claim Application No.408 of 1990. The accident occurred on 20th July, 1984. The Claim Application was filed on 11th October, 1990. The claim was filed by the legal representatives of one Rajaram Margole. The Applicant No.6 who is the son of the deceased Rajaram attained majority on 01st July, 1990. The

learned Member of the Tribunal held that in view of sub-section 3 of section 166 of the Motor Vehicles Act, 1988 the Claim Application in so far as the Applicant Nos.1 to 5 are concerned was barred by limitation. The Claim Application has been allowed in so far Applicant No.6 is concerned. Sub-section 3 of Section 166 provided that a Claim Petition could have been filed in maximum period of twelve months from the date of accident. By Motor Vehicle (Amendment) Act, 1994, sub-section 3 has been omitted with effect from 14th November, 1994. Therefore, from that date, there is no prescribed period of limitation for filing the claim. When the Amendment came into force, the said Claim Application was pending. The question is whether the Applicants will get benefit of the said Amendment. The issue no longer res integra in view of the decision of the Apex Court in **(1996) 4 Supreme Court Cases Page 652 (Dhannalal Vs. D.P.Vijayvargiya and Ors.).** The Apex Court held that deletion of sub-section 3 of section 166 should be given full effect so that object of deletion of the said section by Parliament will not be defeated. The Apex Court held that even in cases where matters were pending before the Tribunal or the High Courts, the benefit of deletion will be made available to the claimants and only in cases where the awards have attained finality

that the benefit will not be available. Therefore, all the claimants in the Application will be entitled to compensation. The Tribunal has taken the income of deceased Rajaram at Rs.1,746/- per month. After deducting 1/3rd amount on account of personal expenditure, the multiplicand comes to Rs.13,968/-. Considering that the age of the deceased as 49 years, multiplier of 9 has been rightly applied by the Tribunal. Thus, the total compensation comes to Rs.1,25,712/-. To this a usual amount of Rs.15,000/- on account of loss of consortium etc. will have to be added. Taking a round figure, the compensation payable is 1,40,000/-. In this case there is no Appeal preferred by the owner of the Dumper and the insurer of the dumper challenging the finding on the point of negligence of the driver of the dumper. In this judgment I have already held that the liability will have to be equally apportioned between the Dumper and the bus. Hence, in this Appeal provision of Rule 33 of Order XLI will have to be applied for passing a proper award and therefore the finding on the and finding on issue of negligence will have to be accordingly modified.

21. This takes me to the issue regarding the Claim Petition filed by the State Road Transport

Corporation. The said Claim Petition is M.A.C. No.10 of 1985. It will be necessary to refer to the claim of the S.T. Corporation. A part of the claim is on account of damage caused to the bus which was involved in the accident. The second part of the claim relates to recovery of ex-gratia compensation paid by the State Road Transport Corporation to the relatives of the deceased passengers and to the injured persons. According to the version of witness No.8 Barma Dhende he was working as Assistant Traffic Superintendent in the S.T. Corporation at Pune. According to him, the total expenses on the repairs of the bus were about Rs.70,000/-. According to him bus was idle for fifteen days and therefore, idle charges per day are claimed. According to him sum of Rs.12,700/- was paid to the injured passengers as on the spot payment. According to him the corporation has sanctioned payment of Rs.30,000/- to the heirs of dead persons as ex-gratia compensation. He stated that except in case of claimants in Case No.189 of 1985, rest of the claimants have not taken the compensation amount of Rs.30,000/-. The Tribunal has granted a sum of Rs.70,000/- on account of damage to the bus, a sum of Rs.42,700/- being the exgratia compensation paid and a sum of Rs.3,000/- on account of idle charges.

22. Shri Kotak has placed reliance on the decision of learned Single Judge of this Court in **Suba Transport Company Vs. Phiroze Sethane Pvt. Ltd. (1993 A.C.J. Page 77).** The issue before the learned Single Judge was as regards jurisdiction of the claims tribunal to adjudicate upon the claims for damage to any property of third party arising out of an accident. The learned Single Judge held that from plain reading of the provisions of the Motor Vehicles Act, 1939 legislature has conferred power on the Tribunal for adjudicating upon claims for compensation in respect of the accidents involving damage to any property owned by the third person only when the said property is put to actual loss by the accident. It is held that the property must be put to loss out of direct incidence of the accident. It is held that if the property is not put to the actual loss or is not owned by the claimant, then in that event the damage to any such property cannot come within the ambit of section 110 read with section 110A of the said Act of 1939. Mr Kotak pointed out that in Civil Appeal No.10406 of 1995 the decision of the learned Single Judge has been confirmed by the Apex Court by the order dated 21st August, 2002.

23. Coming back to the findings recorded by the

Tribunal in so far as Claim Petition filed by the Maharashtra State Road Transport Corporation is concerned, the Tribunal found that claimant in M.A.C. Application No.189 of 1985 had received Rs.30,000/- by way of ex-gratia compensation from the Corporation and therefore, that amount was recoverable by the Corporation from the owner of the dumper. The Tribunal allowed idle charges at a flat rate of Rs.200/- per day for a period of fifteen days. The Tribunal also accepted that a sum of Rs.12,700/- was paid by the S.T. Corporation to the injured victims and the said amount is also recoverable by the S.T. Corporation. The Tribunal accepted the evidence of the witness examined by the S.T. Corporation namely, Barma Dhende that the total expenses on the repairs were about Rs.70,000/-. Though the Tribunal has referred to the evidence to witness No.9 Shri Vilas Bandal, it has not considered the said evidence. The said Vilas was working as a senior foreman in Divisional Workshop of the S.T. Corporation at Pune which had undertaken the repair work of the bus involved in the accident. He stated that the work was started from 16th December, 1984 and was going on till 06th January, 1985. He stated that he supervised the repair work and cost of material including labour charges was Rs.23,998.95 paise. This amount is

supported by the document at Exhibit 94. He is the witness examined by the State Transport Corporation. In the light of this evidence, it is surprising that learned Member of the Tribunal accepted that total expenses incurred on repair were Rs.70,000/-.

24. So far as claim regarding payment of Rs.12,700/- to the injured persons is concerned, reliance was placed on receipts produced by the State Transport Corporation. It must be noted here that none of the alleged recipients of the compensation have been examined by the State Road Transport Corporation to prove the receipt. No particulars of the said injured persons are given in evidence. It was the payment made ex-gratia by the State Road Transport Corporation. Such payment cannot be said to be a damage to a tangible property of the Road Transport Corporation arising directly out of the accident. The payment is made in view of the policy of the Corporation. So far as payment of Sum of Rs.30,000/- to one of the claimants is concerned, as I have held that even the S.T. Corporation is liable to pay compensation to the extent of 50%, the sum of Rs.30,000/- will have to be adjusted against the compensation payable to claimant in M.A.C. Application No.189 of 1985.

25. Thus, the sum and substance of the discussion is that the award made in favour of the S.T. Corporation will have to be modified. A sum of Rs. 23,998.99 paise will have to be awarded on account of cost of the repair work and a sum of Rs.3,000/- on account of the idle charges. Thus, the total amount will be Rs.27,000/-. As the driver of the S.T. bus has contributed to the negligence, the actual amount payable will be 50% of the aforesaid amount with the interest which is awarded by the Tribunal.

26. This takes me to the cross-objections filed by the claimants in First Appeal Nos.247 and 248 of 1987 (i.e. Claim Application Nos.10 of 1986 and 191 of 1984). In the Claim Application No.10 of 1986, in case of deceased of the age of 53 years, compensation of Rs.3,00,000/- has been awarded. Even according to the evidence of widow of the deceased, the total dependency was Rs.3,300/- per month (i.e. Rs.39,600/- per year). Considering the age of the deceased, multiplier of maximum 7 could have been taken. Therefore, the compensation of Rs.3,00,000/- is very reasonable. In Claim Application No.191 of 1984, the age of the deceased was 30 years. The income of the deceased as Rs.2700/- per month. Taking dependency of

Rs.1750/- per month, multiplier of 20 has been applied. In my view, compensation of Rs.2,50,000/- is just and proper and no interference is called for.

27. In so far as Appeals preferred by the insurer of the dumper are concerned, the same will be governed by the decision in the Appeals preferred by the owner of the dumper.

28. The Appeals filed by the owner of the dumper must succeed in part only to the extent of finding regarding negligence. The compensation payable to the claimants will have to be apportioned equally between the S.T. Corporation and the owner and insurer of the dumper. The compenastion fixed by the Tribunal in all the claims is reasonable and no interference can be made with the quantum of compensation. So far as the cross-objections filed by the original claimants are concerned, the same will have to be dismissed. The award made in favour of the Maharashtra State Road Transport Corporation will have also to be modified to the extent stated earlier. The award made in favour of the claimant in M.A.C. No.189 of 1985 will have to be modified by providing that the S.T. Corporation will be entitled to adjust a sum of Rs.30,000/- which is already paid by way of ex-gratia compensation.

29. So far as the First Appeal No.432 of 1997 is concerned, the award will have to be modified by holding that all the claimants will be entitled to the compensation which is already fixed. As a result of allowing the said Appeal, the claimants will have to pay deficit court fee as they have paid court fees only on the claim of Rs.1,33,000/-. Time of four months will have to be granted to pay deficit court fees.

30. The insurance policy issued by the insurer of the dumper was placed on record at Exhibit 122. The policy discloses that the liability in case of third parties was limited to Rs.50,000/-. However, the policy is issued after 01st October, 1982. Hence, the extent of liability will have to be taken to be Rs.1,50,000/- in case of each claim.

31. Hence, I pass the following order:

FIRST APPEAL NO.247 OF 1987

WITH

CROSS OBJECTION NO.14198 OF 1987

AND

FIRST APPEAL NO.515 OF 1987

(i) The impugned judgment and award passed in M.A.C. Application No.10 of 1986 is modified. The operative part of the impugned judgment and award in the said Claim Application will be substituted by following:

"(a) The Opponents do pay Rs.3,00,000/- to the Applicants together with future interest at the rate of 12% per annum from the date of Application till the payment of entire amount.

(b) The Opponents shall pay proportionate costs of the Claim Application to the Applicants. The liability of the Opponent Nos.1 to 3 is to the extent of is 50% and the liability of the Opponent Nos.4 to 6 is to the extent of 50%. It is clarified that the liability of the Opponent No.6-Insurance Company is restricted to Rs.01,50,000/- with interest and proportionate costs on the sum of Rs.01,50,000/-."

(ii) The learned Member of the Tribunal will pass appropriate order for disbursement/distribution of the amount of compensation to various Applicants after taking into account the direction given for disbursement/investment in the impugned judgment and award.

(iii) There will be no orders as to costs in the First Appeals and cross-objection.

(iv) First Appeals are partly allowed in above terms. The cross-objection NO.14198 of 1987 filed by the Respondent Nos.1 to 6 is dismissed.

FIRST APPEAL NO.432 OF 1997

(i) The impugned judgment and award passed in M.A.C. Application No.408 of 1990 is quashed and set aside. The operative part of the judgment and award will now read thus:

"(a) The Opponents do pay to the Applicants a sum of Rs.1,40,000/- together with interest thereon at

the rate of 12% per annum from the date of presentation of the Claim Application till realisation of the amount. The Applicants will be also entitled to proportionate costs of the Claim Petition from the Opponents.

(b) The liability of the Opponent Nos.1 to 3 will be to the extent of 50% and that of the Opponent Nos.4 and 5 will be to the extent of 50%. It is made clear that liability of the Opponent No.2-Insurance Company is restricted to Rs.1,50,000/- together with proportionate costs and interest on the sum of Rs.1,50,000/-."

(ii) Time of four months is granted from today to the Appellants to pay deficit court fees in the original Claim Application as well as in this First Appeal.

(iii) The learned Member of the Tribunal will pass appropriate order for disbursement of the

amount of compensation to the Appellants in accordance with law.

(iv) Appeal is allowed in above terms.

(v) The Respondents to pay costs of the Appeal to the Appellants.

FIRST APPEAL NO.249 OF 1987

AND

FIRST APPEAL NO.514 OF 1987

(i) The impugned judgment and award passed in M.A.C. Application No.189 of 1985 is modified. The operative part of the impugned judgment and award will now read thus:

"(a) The Opponents do pay a sum of Rs.1,62,000/- to the Applicants as compensation together with future interest at the rate of 12% per annum from the date of filing of the Application till the realisation of the entire amount. The Applicants will be entitled to proprotionate costs of the Claim

Application from the Opponents.

(b) The liability of the Opponent Nos.1 to 3 is to the extent of 50% and the liability of the Opponent Nos.4 to 6 is to the extent of 50%. While paying the compensation amount, the Opponent No.1 will be entitled to adjust a sum of Rs.30,000/- paid to the Applicants by way of ex-gratia payment. It is clarified that the liability of the Opponent No.6 is to the extent of only Rs.1,50,000/- together with proportionate costs and interest on Rs.1,50,000/-."

(ii) The learned Member of the Tribunal will pass appropriate order regarding disbursement/investment of the amount of compensation to the Respondents after taking into consideration the direction given for disbursement/investment in the impugned judgment and award.

(iii) There will be no orders as to costs in these

Appeals.

(iv) Appeals are allowed partly as above.

FIRST APPEAL NO.246 OF 1987

AND

FIRST APPEAL NO.511 OF 1987

(i) The impugned judgment and award passed in M.A.C. Application No.190 of 1984 is modified. The operative part of the impugned judgment and award will now read thus:

"(a) The Opponents do pay Rs.3,26,200/- to the Applicants together with future interest at the rate of 12% per annum from the date of Application till the date of realisation of the entire amount.

(b) The Opponents will also pay proportionate costs of the Claim Application to the Applicants. The liability of the Opponent Nos.1 to 3 is to the extent of 50% and the liability of the Opponent Nos.4 and

5 is to the extent of 50%. It is made clear that the liability of the Opponent No.3-Insurance Company is restricted to a sum of Rs.1,50,000/- together with proportionate costs and interest on the sum of Rs.1,50,000/-."

(ii) The learned Member of the Tribunal will pass appropriate order for disbursement/investment of the amount of compensation to the Respondents after taking into consideration the directions given in that behalf in the impugned judgment and award.

(iii) There will be no orders as to costs in these Appeals.

(iv) The Appeals are partly allowed in above terms.

FIRST APPEAL NO.251 OF 1987

AND

FIRST APPEAL NO.513 OF 1987

(i) The impugned judgment and award in M.A.C. Application No.10 of 1985 is modified. The operative part of the award will now read

thus:

"(a) The Opponents do pay to the Applicant a sum of Rs.13,500/- together with interest at the rate of 12% per annum from the date of filing the Claim Application till realisation of the amount. The Opponent shall pay proportionate costs of the Claim Application to the Applicant."

(ii) If the Appellants have paid any amount to the Respondent on the basis of the impugned judgment and award, the Respondent will be liable to make necessary refund to the Appellants.

(iii) There will be no orders as to costs in these Appeals.

(iv) Appeals are partly allowed in above terms.

FIRST APPEAL NO.250 OF 1987

AND

FIRST APPEAL NO.510 OF 1987

(i) The impugned judgment and award in M.A.C. Application No.189 of 1984 is modified. The operative part of the impugned judgment and award will now read as under:

"(a) The Opponents do pay the Applicants a sum of Rs.1,22,000/- together with future interest at the rate of 12% per annum from the date of filing of Claim Application till the realisation of the entire amount. The Opponents shall pay proportionate costs to the Applicants of the Claim Application.

(b) The liability of the Opponent Nos.1 to 3 is to the extent of 50% and the liability of the Opponent Nos.4 and 5 is to the extent of 50%. It is made clear that the liability of the Opponent No.3-Insurance Company is restricted to Rs.1,50,000/- with proportionate costs and interest on Rs.1,50,000/-."

(ii) The learned Member of the Tribunal will pass appropriate order for disbursement/investment of the amount of compensation after taking into account the direction given in that behalf in the impugned judgment and award.

(iii) There will be no orders as to costs in these Appeals.

(iv) Appeals are partly allowed in above terms.

FIRST APPEAL NO.248 OF 1987

WITH

CROSS-OBJECTION

AND

FIRST APPEAL NO.512 OF 1987

(i) The impugned judgment and award in M.A.C. Application No.191 of 1984 is modified. The operative part of the impugned judgment and award in the said Claim Application will now read thus:

"(a) The Opponents do pay sum of Rs.2,50,000/- by way of compensation to the Applicants

together with future interest at the rate of 12% per annum from the date of filing of the Application till the realisation of the entire amount. The Opponents shall pay proportionate costs of the Claim Application to the Applicants.

(b) The liability of the Opponent Nos.1 to 3 is to the extent of 50% and the liability of the Opponent Nos.4 and 5 is to the extent of 50%. It is made clear that liability of the Opponent No.3-Insurance Company is restricted to Rs.1,50,000/- together with proportionate costs and interest on Rs.1,50,000/-."

(ii) The learned Member of the Tribunal will pass appropriate order for disbursement/investment of the compensation amount to the original Applicants after taking into account the direction given in that behalf in the impugned judgment and award.

(iii) There will be no orders as to costs in the

Appeals and cross-objection.

(iv) First Appeals are partly allowed in above terms. The cross-objection stands dismissed.

JUDGE